Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

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Robert May,
Petitioner

v.

Desiree Douglass,
Respondent

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

# PETITION FOR WRIT OF CERTIORARI

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102 pp

December 13, 2001

## QUESTIONS PRESENTED

### I. Introductory Statement

This case presents the issue of whether or not a state court may deny review of an order that indefinitely suspends the fundamental and protected liberty interests of a parent and child to the society and companionship of their family when that suspension was court initiated and based largely on the use of said courts' wide discretionary powers in parent-child matters.

This case present several corollary issues concerning the protection of fundamental liberty interests of family and parent-child-family relationships. Those corollary issues include: 10 does the discretionary suspension of parent-child-family liberty interests require the same heightened protections and standards required of a permanent liberty deprivation (termination of rights) action; 2) is a court-initiated discretionary action that fails to properly meet heightened substantive and procedural due process requirements of a parent-child-family liberty deprivation action ever subject to *res judicata* and finality of decision doctrine; and 3) is a state court initiated discretionary action that deprives a parent and child of their family liberty interests without the requirements of heightened substantive and procedural due process required by the Due Process Clause of the 14th Amendment that suspends void.

On May 19, 1997, Washington superior court family department heard an adequate cause threshold to modify a 1995 parenting plan matter. After a short but very spirited exchange, that court found the case to be a "high conflict case" and imposed the requirement on the instant petitioner to ensure a

guardian ad liter (GAL) appointed to the case was paid $1800 and presents the court with petitioner's documented progress in anger management before he might resume an impractical parenting plan residential schedule.

In December 1999, petitioner sought reinstatement of his parent-child liberty through petition to state superior court. On November 14, 2000, that court ordered the May 19, 1997 order modified for a five time. Petitioner filed an appeal and sought discretionary review of the void order. Though a protected fundamental family liberty that is protected by the 14th Amendment is at issue and a lower court dismissed the action that affects said substantial civil liberty, the Washington Court of Appeals and the Washington Supreme Court denied discretionary review to petitioner finding a lack of timeliness of appeal and the doctrine of "finality of decision" did not allow those courts discretion to review the May 19, 1997 order.

## II. Question Presented

(1) Was the decision by the Washington State Supreme Court and its lower courts not to afford petitioner a review of a family law court decision that indefinitely deprives petitioner the care, custody, and control of his youngest child without trial and without a formal termination/suspension hearing so violative of proper procedural and substantive due process under the 14th Amendment, the protections provided by 42 U.S.C. § 1983, and the protections of Washington State law that this Court should exercise its powers?

## PARTIES TO THIS PROCEEDING

The names of all parties to this proceeding are contained in the caption of this case. Petitioner is an individual, not a corporate entity.

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## OPINIONS BELOW

Order of the Supreme Court of Washington dated October 2, 2001 is set forth in Appendix; Ruling Denying Review of the Supreme Court of Washington dated July 26, 2001 is set forth in Appendix; Order Denying Motion To Modify of the Court of Appeals, Division 1, State of Washington dated May 9, 2001 is set forth in Appendix; the opinion of the Court of Appeals, Division 1, State of Washington is presented in Commissioner's Ruling Denying Discretionary Review and Denying Without Prejudice Respondent's Motion To Dismiss Appeal dated March 12, 2001 and is set forth in Appendix; Washington Superior Court Order Denying Relief To Father dated November 14, 2000 is set forth in Appendix; Washington Superior

Court Order on Family Law Motion dated May 19, 1997 is set forth in Appendix.

All other relevant opinions and orders of Superior Court of the State of Washington for King County, Seattle, Washington are set forth in Appendix. All opinions and orders in this case are unreported.

## STATEMENT OF JURISDICTION

The Supreme Court of the State of Washington entered its final judgment on October 2, 2001 denying review of its decision of July 26, 2001 affirming Washington Court of Appeals decisions denying discretionary review of May 19, 1997 superior court based upon interlocutory appeal of November 14, 2000 order. This court has jurisdiction to review this petition pursuant to 28 U.S.C. § 1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) The Fourteenth Amendment of the United States Constitution provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) The United States Code, 42 U.S.C. § 1983 (Civil action for deprivation of rights) provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(3) Article 1, section 2 of the State of Washington Constitution provides:

> The Constitution of the United States is the supreme law of the land.

(4) Article 1, section 3 of the State of Washington Constitution provides:

> No person shall be deprived of life, liberty, or property without due process of law.

(5) RCW 26.09.260 (Modification of parenting plan or custody decree) provides:

> (1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the

nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.
(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:
(a) The parents agree to the modification;
(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;
(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.
(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.
(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.
(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is

only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:
(a) Does not exceed twenty-four full days in a calendar year; or
(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or
(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.
(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate

cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5) (c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is

in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

(6) RCW 13.34.180 (Order terminating parent and child relationship—Petition—Filing - Allegations) provides:

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a disposition order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency; and

[* * * RCW 13.34.180(1)(d)-(f) and (2) OMITTED * * *]

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was

found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

[* * * RCW 13.34.180 (3) OMITTED * * * ]

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE"

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure) .

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number) ."

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

# PETITION FOR WRIT OF CERTIORARI

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## STATEMENT OF THE CASE

(1). Introduction. Dominick May-Douglass (Dominick) was born out-of-wedlock to Robert May (petitioner) and Desiree Douglass (respondent) on June 22, 1993. Robert May established paternity of Dominick in accordance with Washington law on September 14, 1993. Petitioner and respondent filed separate actions to establish a parenting plan in June 1994 and October 1994.

Those cases were consolidated in March 1995 under a paternity action suit. On September 19, 1995, Superior Court of Washington, Seattle, King County, Washington (superior court) issued, *inter alia*, Parenting Plan Order for Dominick under the earlier filed action. *See May v. Douglass*, Parenting Plan Final Order, Washington Superior Court No. 94-04567-2 (Sept 19, 1995, unpublished)/Appendix A24-A40. On September 27, 1995, superior court issued its order and judgment establishing paternity under the later filed case number. *See Douglass v. May*, Judgment and Order Determining Parentage and Granting Additional Relief, Washington Superior Court No. 94-04567-2 (Sept 19, 1995, unpublished).

In November 1996, Robert May, at the time the single custodial parent three minor children, accepted employment with an Oregon firm. He moved, with his three minor children and one adult 18 year old, to Tigard, Oregon. In January 1997, in accordance Revised Code of Washington (RCW) 26.09.260, petitioner Robert May filed a petition to modify 1995 Parenting Plan for Dominick. RCW 26.09.260 (5) states:

> The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of

the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time:
(a) Does not exceed twenty-four full days in a calendar year; or
(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow . . . ."

(2). May 19, 1997 Adequate Cause Threshold Hearing and June 20, 1997 Revision Hearing. In accordance with Washington law, judicial procedures, and the Order of Domestic Case Schedule, a parent plan modification Adequate Cause Threshold hearing for was held before the Washington superior court family law department on May 19, 1997. After denying both parties' petitions for modification of parenting plan, *inter alia*, that family law court, on its own motion relying on Washington "high conflict case" law and its wide discretionary powers in family law matters, modified the parenting plan by suspended petitioner's parental rights and Dominick's family rights to his father and his siblings. *See Douglass and May*, Order on Family Law Motion, Washington Superior Court Nos. 94-3-04567-2 SEA/94-5-03704-9 SEA (May 19, 1997, unpublished)/Appendix p. A21-A23.

That court determined the protracted litigation over the parenting plan for Dominick met the "high conflict case" profile under *In re Marriage of Giordano* and *In re Marriage of Lilly*. *Id.* at p. 3/Appendix p. A23

> Finding a "high conflict case" in *In re Marriage of Giordano*, finding a party intransigent concerning a court decree, superior court placed a moratorium

on a party's access to court to ensure the party "did not waste additional judicial resources." The decision was affirmed as to the moratorium on access to the state court. *In re Marriage of Giordano*, 57 Wash.App. 74, 787 P.2d 51 (1990).

Finding the noncustodial parent intransigent over the matter of attorney fees awarded under a parenting plan in *In re Marriage of Lilly*, superior court awarded attorney fees in favor of the custodial parent. *In re Marriage of Lilly*, 75 Wash.App. 715, 880 P.2d 40 (1994).

Finding this case met the "high conflict case" profile and apparently relying upon a case of first impression, the *Kirshenbaum v. Kirshenbaum* case, the 1997 family law court used its wide discretionary powers to suspend residential schedule of parent and child. The court required petitioner to ensure the GAL appointment of Caroline Davis due to her "special expertise" and pay the GAL retainer fee of $1800. The suspension, the requirement to pay the retainer fee of $1800 instead of $200 per party ($400 total), and the requirement that petitioner be solely responsible for payment of retainer though that court admits it did not have a "financial declaration to show [petitioner or respondent] inability to pay fees" are all modifications to the 1995 trial-court ordered parenting plan. *See May v. Douglass*, Parenting Plan Final Order, Superior Court Case 94-3-04567-2 (Sept 1995)/Appendix A24-A40 and *Douglass v. May*, Judgment and Order Determining Parentage and Granting Additional Relief, Superior Court Case 94-5-03704-9 (Sept 1995)/Appendix A45-A52 at A40.

In *Kirshenbaum v. Kirshenbaum*, the Washington Court of Appeals affirmed a superior court decision to suspend noncustodial parent's residential

schedule to allow a "private practitioner to oversee the performance of the parenting plan or make alterations" and found it was not an abuse of discretion. In that case that court pointed out the "court retained ultimate authority to review." *Kirshenbaum v. Kirshenbaum*, Wash.App. 799, 929 P.2d 1204 (1997)

Petitioner filed a revision (reconsideration) motion to superior court. On June 20, 1997, superior court heard the revision motion and affirmed the May 19, 1997 order suspending parent-child-family liberty interests of petitioner and his youngest child. *See Douglass v. May*, Order on Civil Motion, Washington Superior Court No. 94-5-03704-9 (June 20, 1997, unpublished)/Appendix p. A20.

(3). First Court of Appeals action and subsequent 1997 superior court action. In August 1997, while appeals on the May 19, 1997 decision are pending, respondent again petitioned that court for a modification of the parenting plan order to renew her request to move to California without GAL recommendation. Petitioner joined in the renewed modification request and sought reinstatement of his parent-child-family liberty interests and a modification of the parenting plan.

Family Law Court (presided by Superior Court Judge DuBuque) granted respondent's modification of the parenting plan order to allow her to move to California without a GAL recommendation, yet denied reinstatement and modification to petitioner stating it did not have the authority to overrule the June 20, 1997 superior order affirming the May 19, 1997 order.

In post-decision argument, petitioner further pleaded that Judge DuBuque was a superior court judge and could reconsider the May 19, 1997 order as she had just modified the May 19, 1997 order by allowing respondent's modification request that had been

denied by the May 19, 1997 order affirmed June 20, 1997. Petitioner pointed out that respondent was restrained from moving by order of 1995 trial-court; and her residential move required recommendation of GAL per parenting plan order. In the trial court findings of fact and the parenting plan, 1995 trial court clearly restrains respondent's ability to make household moves. Respondent has a remarkable history of unrestrained residential moves. The Findings of Fact and Conclusions of Law in part reads:

> *"[Desiree Douglass'] proposed provision permitting her to move out of the area without a court order or mutual written agreement is not approved but a preference shall be given to the parameters set forth in her parent plan, which are based on the recommendation of the guardian ad litem when determining the visitation for a move from the area."* *Douglass v. May*, Findings of Fact and Conclusions of Law, Washington Superior Court No.94-5-03704-9 (Sep 19, 1995, unpublished) /Appendix p. A-52-A59 at A55; *see May v. Douglass*, Parenting Plan Final Order, *supra* at p. A36.

That August 1997 court denied petitioner's modification and reinstatement of parent-family liberty rights request. Petitioner appealed that decision under the same appellate case then pending before the Court of Appeals.

Though petitioner submitted two appellant briefs to the Court of Appeals, each was returned for over length. Thereafter, pro se petitioner failed to perfect his appeals due, among other reasons, to his ill health and surgery occurring in July 1998. The Court of Appeals dismissed the matter in August 1998.

(4). 1999-2000 Court Actions to Reinstate Parent-Child-Family Liberty Interest. In November 1999, respondent applied to court to move to Austin, Texas. In December 1999, petitioner and again filed a

petitioner to modify parenting plan and reinstate his and his youngest child's residential schedule. This request was based upon the assumption the May 19, 1997 order is void; upon respondent's third petition to modify parenting plan and be allowed to move to Texas; and the resignation of the GAL six months earlier. Dominick has been unable to visit his older brother Albert May (now age 15 years), who lives with his father, and his father since May 19, 1997.

In January 2000, superior court family law department reviewed petitioner's petition and respondent's modification motion, again without GAL recommendation. That court granted respondent's request to move to Texas (Respondent's fifth of six interstate moves and ninth residential move since Dominick's birth six years earlier). *See May v. Douglass*, Order on Family Law Motion, Washington Superior Court No.94-5-03704-9 (Jan 28, 2000, unpublished)/Appendix p. A-17-A19. That court again denied petitioner's motion to reinstate residential schedule citing, *inter alia*, a lack of evidence to support reinstatement because of the lack of a GAL. That court ratified the withdrawal of the case's second GAL Caroline Davis, who resigned without notifying petitioner in May 1999 to be a Court Appointed Special Advocate, and ordered petitioner to seek, hire and pay for the cases third GAL before it would reconsider reinstating he and his child's residential schedule (parent-child-family liberty interest protected by U.S.C.A. Const.Amend. 14).

Consistent with the earlier rulings of the 1997 family law courts, the January 2000 court opined without the guardian ad litem, it did not have sufficient evidence to allow the reinstatement of petitioner May's parenting plan and lacked the authority to overturn the May 19, 1997 order affirmed June 20, 1997.

Petitioner May filed revision motion. On February 25, 2000, Superior Court affirmed yet modified

January 2000 order. That court's modification, at the respondent's request, was to strike the only GAL candidate on the January 2000 order to accept the GAL position. All other candidates provided by the January 2000 court except Michael Louden had declined the GAL position by February 15, 2000. (Joan Ward declined the appointment about February 12, 2000. Joan Ward was subsequently appointed GAL on June 30, 2000 and resigned on July 30, 2000.) That court ordered petitioner to return to Commissioner Bradburn-Johnson of family law court to get another GAL list.

Based upon the failed GAL candidate selection process, *inter alia*, petitioner sought reconsideration of the February 25, 2000 order that continued the deprivation of his parent-child-family liberties without a procedurally proper hearing and without allowing proper due process. On March 23, 2000, superior court again denied petitioner's motion for reconsideration. That court then divested itself of jurisdiction over the matter it had affirmed on June 20, 1997. Oddly, that court ordered, *"the Court divests itself of any remaining jurisdiction over this case and directs any further proceedings in this case to be handled on the Family Law motions calendar." May v. Douglass*, Order Denying Motion For Reconsideration, Superior Court Case Number 94-5-03704-9 SEA (March 23, 2000, unpublished).

As the petitioner's case schedule (Order for Schedule of Domestic Schedule for Modification) remained intact and the trial for the petition to reinstate his parental liberty and modify the parenting plan remain scheduled for November 2000, petitioner did not seek an interlocutory appeal of the decisions. He fully expected to have all unresolved matters reviewed and adjudicated in trial before superior court.

In June 2000, family law court appointed Joan Ward as case's third GAL over petitioner's objection. Joan

Ward resigned as GAL in July 2000 stating she had a conflict of interest. Respondent then through court action opposed appointed of petitioner selected GAL candidate.

Petitioner failed to meet the modification case schedule because of the GAL appointment problems among issues pressed by the court. In August 2000, a court-appointed Master dismissed the modification petition and case for failure to keep schedule. Again, petitioner filed revision to superior court based upon the failed GAL appointment. Petitioner's case schedule was reinstated.

Respondent sought reconsideration of the reinstatement. Superior Court reconsidered its August 2000 decision on November 14, 2000.

On November 14, 2000, acting upon respondent's motion for reconsideration of ruling reinstating the petitioner's case schedule order, Washington Superior Court issued an order that denied petitioner's Washington Superior Rule 60 motion for review of the May 19, 1997 order affirmed June 20, 1997.

(5). November 14, 2000 Superior Court Order. The November 14, 2000 court, among its actions, refused to have a hearing on the matter of the reinstatement of residential schedule. That court continued the deprivation of father-child-family 14th Amendment protected liberty interests, dismissed with prejudice petitioner's petition to reinstate and modify his residential schedule though mandated by Washington statute. *See* RCW 26.09.260.

Petitioner based all reinstatement of residential schedule (deprivation of parental liberty interest actions) on CR 60 and the violations of 14th Amendment Due Process protections required before the state may initiate a deprivation of parent-family liberty interest. Petitioner presented his CR 60 motions on the following premises:

(a). The May 19, 1997 court lacked authority and subject matter jurisdiction on the issue of parent-child-family liberty deprivation of petitioner and child's family;
(b). The superior court (State) initiated action did not provide petitioner (or respondent) proper and required notice of the family-parental liberty deprivation (suspension) hearing; and therefore the May 19, 1997 court failed to comport with proper and accepted judicial procedures. Accordingly, that court lacked personal jurisdiction over the parties concerning the liberty deprivation subject matter (Note: the May 19, 1997 court dismissed petitioner May's motion for contempt of court against respondent for failure of proper procedural notice *viz.*, petitioner failed to file an Order To Show Cause Notice Hearing as is required of the state in a parent-child rights deprivation hearing);
(c). The May 19, 1997 court failed to provide petitioner proper procedural and substance due a required by Washington State law, the U.S. Constitution 14th Amendment, and 42 U.S.C. § 1983 *viz.*, "a parental rights deprivation hearing using the "clear, convincing, and cogent" evidentiary standard required by law to meet substantive Due Process requirements the United States Supreme Constitution, federal law, Washington Constitution and Washington law;
(d). As the original court that issued the May 19, 1997 liberty deprivation order did not have proper jurisdiction; failed to comport with proper and accepted judicial procedures; failed to provide petitioner and his children with required proper substantive and procedural due process pursuant to the Washington Constitution and the U.S. Constitution 14th Amendment Due Process Clauses, *inter alia*; prior to suspending (depriving) parent-family liberty, the May 19, 1997 order and

all subsequent superior court orders modifying said order are void or voidable on their face.

The November 14, 2000 court denied petitioner's CR 60 motion and dismissed with prejudice petitioner's action to reinstate his parent-family liberties deprived by discretionary decisions at court (state)-initiated action since May 19, 1997.

Based upon the November 14, 2000 court's order that again orders modified the May 19, 1997 order concerning the guardian ad litem requirement; its denial of reinstatement of petitioner May's parenting plan suspended by the May 19, 1997 court; its denial of review of the May 19, 1997 order and subsequent orders, petitioner May again appealed to the Washington Court of Appeals and sought an interlocutory review of the May 19, 1997 order via the discretionary review process.

(6). 2001 Washington State Court Of Appeals' Decisions. After a hearing with oral arguments, the Washington Court of Appeals, denied petitioner's Motion for Discretionary Review. In the Court of Appeals' decision "Commissioner's Ruling Denying Discretionary Review and Denying Without Prejudice Respondent's Motion To Dismiss Appeal" that court held that the doctrine of "finality of decision" and timeliness of application of review would not allow review of the May 19, 1997 superior court order. *See May v. Douglass*, Commissioner's Ruling Denying Discretionary Review and Denying Without Prejudice Respondent's Motion To Dismiss Appeal, Washington Court of Appeals No. 47843-5-I (March 12, 2001, unpublished) /Appendix p. A7-A10. The Court of Appeals affirmed its denial of discretionary review of the May 19, 1997 on May 9, 2001. *See May v. Douglass*, Order Denying Motion To Modify, Washington Court of Appeals No. 47843-5-I (March 12, 2001, unpublished) /Appendix p. A6.

Petitioner appealed to the Washington Supreme Court.

(7). 2001 Washington State Supreme Court's Decisions. After a hearing with oral arguments before a Supreme Court Commissioner on the decision by the Court of Appeals not to accept discretionary review of the May 19, 1997 order, the Washington Supreme Court affirmed the Court of Appeals decision not to accepted discretionary review of the May 19, 1997 order and judicial proceeding. *See May v. Douglass*, Ruling Denying Review, Washington Supreme Court No. 71145-3 (July 26, 2001, unpublished) /Appendix p. A4. A panel of the Washington Supreme Court affirmed the commissioner's decision denying discretionary review on October 2, 2001. *See May v. Douglass*, Order, Washington Supreme Court No. 71145-3 (Oct 2, 2001, unpublished)/Appendix p. A3.

ARGUMENT

WAS THE DECISION BY THE WASHINGTON STATE SUPREME COURT AND ITS LOWER COURTS NOT TO AFFORD PETITIONER A REVIEW OF A FAMILY LAW COURT DECISION THAT INDEFINITELY DEPRIVES PETITIONER THE CARE, CUSTODY, AND CONTROL OF HIS YOUNGEST CHILD WITHOUT TRIAL AND WITHOUT A FORMAL SUSPENSION/LIBERTY DEPRIVATION HEARING SO VIOLATIVE OF PROPER PROCEDURAL AND SUBSTANTIVE DUE PROCESS REQUIRED BY THE 14TH AMENDMENT, THE FEDERAL LAW (42 U.S.C. § 1983), AND THE WASHINGTON STATE CONSTITUTION THAT THIS COURT SHOULD EXERCISE ITS POWERS?

Yes. The Supreme Court and its lower courts have a nondiscretionary duty to review an order that deprives an individual of an established protected 14th Amendment liberty interest particularly when that

deprivation was accomplished without proper procedural due process.

The Fourteenth Amendment does not protect against all deprivations of liberty, "only against deprivations of liberty accomplished 'without due process of law.' " *Baker v. McCollan*, 443 U.S. 137, 145, 99 S.Ct. 2689, 2695, 61 L.Ed.2D 433 (1979). Parental rights have been categorized as a "liberty" protected by the due process clause of the Fourteenth Amendment. *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042, 29 A.L.R. (1923); *In re Akers*, 22 Wash.App. 749, 753, 592 P.2d 647 (1970); *In re Marriage of Ebbighausen*, Wash.App. 708 P.2d 1220 (1985).

The state court relied upon the wrong standard and its discretionary powers to improperly deprive petitioner and his child of their family liberties. This Court requires proper due be afforded every individual before the state may interfere with this liberty. For the state court to deprive petitioner of his parental liberty, it must have used the "clear, convincing, and cogent standard" ratified by the *Santosky v. Kramer* case.

> "Process is constitutionally due a natural parent at a state initiated parental rights termination proceeding. * * * (a) fundamental liberty interest of the natural parent in the care, custody, and management of [his] child is protected by the Fourteenth Amendment * * *." *See Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

Petitioner established his parental rights to his youngest son in accordance with Washington law in September 1993 by Affidavit of Paternity. The state court ratified that natural parental liberty and right with its September 27, 1995 order establishing paternity. *Douglass v. May*, Judgment and Order

Determining Parentage and Granting Additional Relief, Superior Court Case 94-5-03704-9 (Sept 1995)/Appendix A45-A52. The state established a parenting plan on September 19, 1995 to allow petitioner to enforce his natural and established parental liberty. *May v. Douglass*, Parenting Plan Final Order, Superior Court Case 94-3-04567-2 (Sept 1995)/Appendix A24-A40. Having met the burden of establishing a protected right, the court must apply the appropriate substantive due process standard to deprive petitioner of that right.

> If the plaintiff meets this burden then the officials must prove that "their conduct was reasonable under the applicable standards even though it might have violated the plaintiff's constitutional rights." *Benigni v. City of Hemet*, 879 F.2d 473, 480 (9th Cir. 1998).

Here, there are no allegations of child abuse and there are no allegations of risk to the child. There was no balancing of the "best interest of the child" to make the deprivation decision. *See Douglass v. May*, Order on Family Law Motion, Superior Court 94-3-04567-2 SEA/94-5-03704-9 SEA (May 1997)/Appendix A21-A23. The state court cannot claim it is balancing a state interest against individual rights. Unlike *Baker v. Racansky* , the state court may not rely on the notion its action "involves the difficult balancing of a family's right to autonomy against the state's interest in protecting minor children from abuse." *But see Baker v. Racansky*, 887 F.2d 183, 187 (9th Cir. 1989); *Devereaux v. Perez*, 218 F.3d 1045 (9TH Cir. 2000).

The state courts never reached the threshold for balancing its interest against the petitioner-child's interest because the state courts because it failed to meet substantive due process requirements. Again, the state failed to provide all parties including the

appointed GAL procedurally proper and adequate notice of a parent-child rights deprivation hearing; never proper obtained subject matter jurisdiction; and failed to gain proper personal jurisdiction over the parties.

There exists absolutely no "clear, cogent, and convincing" evidence required by the United States Supreme that would allow the state court initiated action that deprived petitioner of his parental rights. There was no evidence presented at the May 19, 1997 forum.

The May 19, 1995 hearing was not the proper forum for a deprivation of parental rights hearing. It was a modification of parenting plan threshold hearing scheduled by petitioner. The court gave no notice it was contemplating the deprivation action it initiated at its discretion. That court ostensibly used its discretionary powers to coerce enforcement of a clearly flawed and impractical parenting plan at the expense of the liberties of parent, child and their family. The May 19, 1997 order and all subsequent orders enforcing the parent-child-family liberty deprivation are void. CR 60 allows party to vacate a void judgment and order.

> When a judgment is void, the trial court has a nondiscretionary duty to grant relief. *Kennedy v. Sundown Speed Marine, Inc.*, 97 Wash.2d 544, 549, 647 P.2d 30 (Utter, J., dissenting), cert. denied, 459 U.SU. 1037, 103 S.Ct.449, 74 L.Ed.2d 603 (1982); *In re Marriage of Maxfield*, 47 Wash.App. 699, 703, 737 P.2d 671(1987 ); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash.App. 517, 520, 731 P.2d 533 (1987). The state courts have a nondiscretionary duty to review the decision upon application by the injured parties. Void orders and judgments may be vacated irrespective of lapse of time. *John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 370, 83 P.2d 221,

118 A.LR. 1484 (1938); *In re Marriage of Hardt*, 39 Wash.App. 493, 496, 693 P.2d 1386 (1985).

> CR 60 provides: "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> "(5) The judgment is void;"
>
> Individuals may maintain a civil rights action when the government deprives them of any rights, privileges, or immunities guaranteed by both the United States Constitution and federal laws. *See* 42 U.S.C. § 1983. This statute is designed to protect individuals from an abuse of state power by providing a cause of action against state and local officials who, acting within the scope of their duties, have deprived an individual of a cognizable federal right. *Devereaux v. Perez*, 218 F.3d 1045 (9TH Cir. 2000); *see Baker v. McCollan*, 443 U.S. 137, 140, 99 S.Ct. 2689, 2692, 61 L.Ed.2D 433 (1979).

Upon superior court's denial of review, the appellate courts are mandated to review a deprivation of liberty claim.

> Review of a denial of a CR 60(b) motion is generally limited to the propriety of the denial, and is not a review of the original judgment. *Bjurstrom v. Campbell*, 27 Wash.App. 449, 618 P.2d 533 (1980). However, if questions are raised concerning lack of trial court jurisdiction, these issues are resolved on appeal as justice may require. *State v. Santos*, 104

Wash.2d 142, 702 P.2d 1179 (1985).

> Choices about marriage, family life, and upbringing of children are among associational rights ranked as of basic importance in our society, rights sheltered by Fourteenth Amendment against State's unwarranted usurpation, disregard, or disrespect. U.S.C.A. Const.Amend. 14; *Washington v. Glucksberg*, 521 U.S. 702, 721-722, 117 S.Ct. 2258, 138 l.Ed.2d 772 (Jun 1978).

Petitioner and his child have been deprived of their parent-child-liberty liberty rights and the companionship and society of family nearly five years on the caprice (manifest abuse of discretion) of the Washington state courts. The abuse of discretion continues because Washington appellate courts refused to review clear procedural due process errors made in 1997 and by subsequent court actions. The lack of appellate review allows Washington superior court to 1997 exacerbate the due process errors through modifying the errors and continuing to enforce a decision that is void on its face.

Washington courts manifestly abuse its discretion using "high conflict" case law to overcome the necessary substantive and procedural Due Process Clause threshold to deprive a person of his parental liberty interests even temporarily and certainly, as in this case, indefinitely.

No matter how broad the state courts' discretionary powers may be in parenting plan cases, the 1997 family law court never reached the broad breath of substantive due process required to institute a proceeding that deprives, through indefinite suspension, a parent and his child of their 14th Amendment protected parental-child-familial rights.

Though the 1997 family law order gives reference to the concept of "clear, convincing, and cogent"

evidence, that evidence concerns whether not petitioner was required to give respondent formal written notice that he intended to extend his schedule to make-up for days lost due to respondent's vacation and business trips in accordance with the parent plan order. The statement had little to nothing to do with substantive due process.

As petitioner and his child have a substantial civil liberty at stake; because the November 14, 2000 court denied review of a void order on the basis of *res judicata*; and because that court dismissed petitioner's petition to reinstate and modify the 1995 parenting plan that has been constructively terminated, the appellate courts have a nondiscretionary mandate to review and tender judgment on this case.

The state courts denial review of the May 19, 1997 order as being "untimely" implies that petitioner is issue and claim precluded from seeking to reinstate his parental liberty because of the passage of time.

The Washington state courts rely on the concepts of *res judicata* and "finality of decision" to suggest that its use if its discretion to remove a protection liberty without proper procedural due process cannot be reviewed. The notion of "untimely" infers that petitioner either does not have standing to argue his claims or the courts no longer have subject matter jurisdiction of his claims.

Because superior court did not ever use the proper due process required to suspend and thereby deprive petitioner and his youngest child of their family liberty protected by the 14th Amendment, the underlying May 19, 1997 order is void as a matter of law.

When a judgment is void, the trial court has a nondiscretionary duty to grant relief. *Kennedy v. Sundown Speed Marine, Inc., supra*; *In re Marriage of Maxfield, supra*; *Brickum Inv. Co. v. Vernham Corp., supra*. The state appellate courts have a nondiscretionary duty to review the decision upon

application by the injured parties. Void orders and judgments may be vacated irrespective of lapse of time. *John Hancock Mut. Life Ins. Co. v. Gooley, supra; In re Marriage of Hardt, supra.* A void order cannot be *res judicata* or a final judgment and order. The state appellate courts and its lower court may not summarily deny review of a temporarily deprived civil right based upon issue and claim preclusion. Obviously, if claim and issue are precluded from further adjudication, the parent-child liberty interest has been completely terminated without ant proper due process protection and without further recourse. The liberty interests of the petitioner and child hinge upon the requirement of the petitioner to engage and pay a GAL. Yet, the court has appointed four GALs in this case. Two of these appointments were opposed by respondent without good cause unnecessarily wasting additional judicial resources and precious parent-child residential time. Superior court, on its own motion, twice increased GAL retainer fees and imposed the fee on the petitioner as a sanction for being intransigent regarding this and related parenting plan impracticalities. The state appellate courts must take nondiscretionary review of cases of this nature that have become "high conflict" as a result of superior court "tweaking" and altering of parenting plan conditions.

In the alternative, petitioner has standing to bring his claim as he is not estopped by "untimeliness," *res judicata*, "finality of decision," or issue and claim preclusion. Respondent and superior court initiated actions involving the civil liberties of petitioner and his child. The respondent action and the court-initiated action conferred subject matter jurisdiction and standing on issues previously decided but now being modified. Superior court maintained subject matter jurisdiction through its *de facto* actions to modify the May 19, 1997 order through subsequent orders and by

denying a CR 60(b) and (c) review. It further opened the door by granting respondent two modifications to the impractical parenting plan order. Current superior court actions overcome any "finality of decision" notion any preclusion issues disguised as *res judicata* or even *stare decisis*.

Specifically, the November 14, 2000 superior court review and order directing the family law court commissioner to change the cure to the deprivation of petitioner and his child's liberties clearly allowed review of an the underlying order that is depriving petitioner and child of 14th Amendment protected rights. The November 14, 2000 court orders further change of the liberty deprivation conditions established by the May 19, 1997 order.

Here, the state courts deprivation of family liberty is a unlawful takings. Petitioner does not loose his right to review this takings as the government encroaches farther into his civil liberties with each passing year of deprivation. Restatement, Second Judgments provides clarification on the matters of jurisdiction and its effects on judgments.

> Superior court's modification of the May 19, 1997 order through its many (at least six modifying orders to date) grants petitioner standing for review and precludes the court from relying on "untimely" rationale to deny its subject matter jurisdiction. "Subject to limitations in § 74, a judgment may be set aside or modified if: (1) The judgment was subject to modification by its own terms or by applicable law, and events have occurred subsequent to the judgment that warrant modification of the contemplated kind; or (2) There has been such a substantial change in circumstances that giving continued effect to the judgment is unjust." Restatement, Second Judgments § 73.

Petitioner is always able to pursue a void or voidable order through a CR 60 action. CR 60(b)(5) and (c) motions are not precluded by time or one year proscription. And if they were, superior court re-opened the door to appellate review with its denial of the CR 60 motion.

The November 14, 2000 superior court order states the motion to vacate "*the Order on Family Law Motion dated May 19, 1997, brought pursuant to CR 60 were untimely and procedurally defective.*" Superior court denied review without reviewing the jurisdictional issue as to whether or not the May 19, 1997 order is defective for lack of subject matter jurisdiction (*ultra vires*).

As the subject matter jurisdiction and the validity of the May 19, 1997 order was before the state courts, petitioner has standing to argue subject matter jurisdiction even in the case of a final judgment. CR 60(b)(5), (6), and (11) and CR 60(c).

Inherent in the terms of November 14, 2000 court's order, is petitioner's right to appeal that court's decision and have review of its decision to deny review of May 19, 1997 order pursuant CR 60(b). Under CR 60(b)(5), (6), and (11) and CR 60(c), there is no proscription as to time for motion. CR 60(b)(5), (6), and (11) and CR 60(c).

The host of orders restraining and depriving petitioner and child of their family liberty protects no entities or persons justifiable interest. There was never a proceeding to determine the child best interest, the state overriding interest, the parties' interest balanced against a state interest or any other interest. Here, apparently the only interest at stake is the court's discretionary powers in such matters.

> "A judgment may be avoided in the circumstances stated in Restatement, Second Judgments § 12, except when relief should be denied in order to

protect a justifiable interest of reliance on judgment." Restatement, Second Judgments § 69.

"When a court has rendered a judgment in a contested action, the judgment precludes parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation except if: (1) The subject matter of the action was so plainly beyond the court's jurisdiction that entertaining the action was a manifest abuse of authority . . . ." Restatement, Second Judgments § 12.

Because the state court initiated the deprivation action, it was required to use much more than its wide discretion. It is mandated to provide substantive and procedural due process in accordance with the Due Process Clauses of the state and federal constitutions.

Petitioner has standing to attack the underlying May 19, 1997 order because the issuing court did not have the power to entertain the controversy it initiated.

"Subject matter is a broad concept, one can only attack when the court has no power to entertain controversy, as when Constitution or legislature explicitly denies jurisdiction." *In re the Marriage of Major*, 859 P.2d 1262, 71 Wash.App. 531 (1993).

Federal and state constitutional Due Process Clauses, the Parenting Plan (law of the case), RCW 26.09, and RCW 13.34 precluded the May 19, 1997 Family Law Court from suspending petitioner's residential schedule and constructively terminating parental rights based solely on its discretion and misapplication of "high conflict" case law in conjunction with a dubious decision to enforce parenting plans through parental rights suspension as if the court may deprive any individual his civil rights

without and Order To Show Cause Hearing, substantive due process, and procedural due process. The Washington Supreme Court and its lower courts' denial of review based upon timelines is a clear error. The matters presented the court are presented timely. Petitioner is neither estopped nor precluded from pleading his case on the because of the notion of *res judicata*, finality of decision, or timeliness. Such concepts may not even be applicable in procedurally deficient civil liberty temporary deprivation cases based merely upon the concept that a court has wide discretionary powers. The court always remains open to review of its manifest abuses of discretion. There are few clearer places that a court may manifestly abuse its discretion than in the arena of civil liberties.

The civil liberty deprivation issues being appealed are timely because the court used its discretionary powers and not proper procedure to impose its restraints on father and children.

A review of the May 19, 1997 order is proper and timely without or without the interceding November 14, 2000 order because of the deprivation of parental-familial rights in violation of 14th Amendment protections afforded the petitioner. Because the November 14, 2000 order and court procedures used to tender that order fail based upon the original May 19, 1997 court errors, the matter of the review of procedures and the orders involved are proper.

Because of the nature and the continuing effects of the May 19, 1997 order on the petitioner, there are circumstances and issues for relief that overcome the timeliness proscriptions that are entrenched in the concepts of preclusion, *res judicata*, and finality of decision. The bases for review which overcome the timeliness rebuttal presumption include the following:

(A). Miscarriage of justice based upon unlawful and continuing suspension of father's residential

schedule. Grounds for relief are presented pursuant to Washington Rules of Appellate Procedure (RAP) 1.1(a), RAP 1.2(a), RAP 2.2(a)(3), RAP 2.2(a)(6), RAP (2.2(a)(9)-(10), RAP 2.3(a)-(b), RAP 18.8. Petitioner properly and timely seeks a Discretionary Review of the May 9, 1997 based upon the modifications to that order by superior court orders of November 11, 2000 and now February 27, 2001. Without a discretionary review of the May 19, 1997 the court will allow the continuance of a "gross miscarriage of justice" and the continuance of per se violations of Washington law through the continuing court actions of November 14, 2000 and January 12, 2001 (order promulgated February 27, 2001).

(B). The May 19, 1997 order does not provide finality of decision. Timeliness and the "desirability of finality of orders" are not the standard for acceptance of this discretionary review. Timeliness of the filing is not at issue because the request for discretionary review is based upon recent court orders modifying the May 19, 1997 for which the petitioner ultimately seeks discretionary review. This Motion for Discretionary Review is not filed "*anywhere from 11 months to nearly four years after the orders that he wishes reviewed.*" It is filed based upon a November 14, 2000 superior court order and now the February 27, 2001 superior court order and subsequent order modifying the May 19, 1997 order and unconstitutionally denying petitioner and his child their 14th Amendment rights and protections. Said recent orders modify the terms and requirements in the nearly four years old order that effectively and "constructively" terminated father's parental rights without any good cause showing or other safeguards of law. Because the court's continuing action in this case,

when viewed holistically and in totality upon all interrelated superior court orders, are continuing "manifest abuses of the court's powers," petitioner May maintains bases for relief via discretionary review.

(C). Extraordinary circumstances provide a basis for discretionary review. The appellate court may take discretionary review of the case based upon the extraordinary circumstances where "it serves the ends of justice." The 1997 court's finding remains based upon a lack of subject matter jurisdiction, improper evidence, for untenable reasons, and on unreasonable grounds when considering all the evidence.

(D). Modifications to May 19, 1997 order is a manifest abuse of the court's discretion. Though the basis for father's modification is a right firmly codified by Washington State statutory law, May 19, 1997 court denied both parties' petition for modification of parenting plan. Yet that court modified the parenting plan by effectively terminating both the parenting plan order and the father-child's parental-familial rights. The May 19, 1997 order required petitioner pay the entire GAL fee of $1800 thereby modifying the January 1997 GAL appointing order and September 1995 the trial-court parenting plan though parental rights and the GAL fee were not the matters before the court. That court did not have subject matter jurisdiction over parental rights or modification of a trial-court ordered parenting plan. The $1800 fee the court ordered the father to pay in order to resume any residential schedule to see his child was beyond that court's authority and is a procedurally improper modification of the parenting plan order. The denial of the parties' petition to

modify the 1995 parenting plan order contravenes and therefore subject matter jurisdiction. The 1997 court abused its discretion. The May 19, 1997 order is invalid and all subsequent orders including the November 14, 2000 order are fatally tainted by that order. This Court may review this case because the Washington state court actions unconstitutionally deprive father and son of protected rights.

## SUMMARY AND CONCLUSION

The Washington Supreme Court in refusing to allow discretionary review of an order that effectively indefinitely deprives petitioner of his 14th Amendment guaranteed liberty of parenting his youngest child has entered a decision that allows a superior court order to stand that is in conflict with a decision entered by the United States Supreme Court.

The May 19, 1997 court-initiated action depriving petitioner, his youngest child, and their family of family liberty and companionship is a deprivation of liberty on a par with an action to terminate parent-child rights through a dependency action. In this case aside from the non-mandated permanence, there is no difference for father and child than if their rights had been permanently deprived.

The underlying superior court order has so far departed from the accepted and usual course of judicial proceedings required to deprive an individual of natural parental rights, the order is void for failure to comport with proper procedural due process. Economy of judicial management and "high conflict case" profile does not grant the state the right to dispose of the heightened requirement of substantive due process to have "clear, convincing, and cogent " evidence", before the state can initiate the procedural

due process required to deprive and parent and child of their fundamental liberty interests.

Superior court cannot maintain a GAL in this case. It has imposed four GALs on the case and change the retainer fee requirements from $200.00 per party to $3000 the petitioner must pay before he has a chance at getting a recommendation to have is parental liberty rights in his youngest child restored.

The Washington Supreme Court, by its refusal to grant discretionary review, sanctions the departure by the lower court from the required heightened due process requirements necessary to deprive a parent and his child of their fundamental family liberty. Allowing the state courts to use their discretion in the way undermines the Due Process Clause of the United States Constitution and directly conflicts with the mandates of the United States Supreme on the matter of heighten liberty protection guarantees to the family, the parent, and his child.

As the Washington Supreme Court cannot find its way to protect the rights the petitioner through it supervisory powers of its lower courts, petitioners now seeks review by the United States Supreme Court and requests that the United States Supreme Court exercises its powers to protect the fundamental right of family and parent-child-sibling relationships.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

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Robert May,
Petitioner

v.

Desiree Douglass,
Respondent

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

# APPENDIX TO
# PETITION FOR WRIT OF CERTIORARI

Robert May
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Riddle, Oregon 97469
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*Petitioner Pro Se*

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THE SUPREME COURT OF WASHINGTON

| | | |
|---|---|---|
| Robert J. May, Petitioner, | ) | ORDER |
| v. | ) | No. 71145-3 |
| Desiree L. Douglass, Respondent. | ) | C/A No. 47843-5-1 |

Department I of the Court considered this matter at its October 2, 2001, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That Petitioner's Motion to Modify Commissioner's Ruling is denied.

DATED at Olympia, Washington this 2nd day of October, 2001.

s/Gerry L. Alexander
CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

| | |
|---|---|
| ROBERT JOSEPH MAY,<br><br>Petitioner,<br><br>v.<br><br>DESIREE LUANA DOUGLASS,<br><br>Respondent. | No. 71145-3<br><br>RULING DENYING REVIEW |

By a notice of appeal/notice for discretionary review filed December 15, 2000, and an amended notice filed February 8, 2001, Robert May sought review by the Court of Appeals of a series of superior court orders in his protracted battle with Desiree Douglass over custody, visitation, and support issues regarding their son. The challenged orders were entered on May 19, 1997; June 20, 1997; August 4, 1997; January 29, 200; February 25, 2000; March 23, 2000; November 14, 2000; January 3, 2001; and January 18, 2001. Court of Appeals Commissioner Kesler found the notices untimely as to all of the orders entered prior to November 14, 2000, and denied discretionary review of those orders on that basis. As to the later orders, which Mr. May purports to be

appealing, Commissioner Kesler denied without prejudice Ms. Douglass' motion to dismiss as frivolous. A Court of Appeals panel denied Mr. May's motion to modify Commissioner Kesler's ruling. Mr. May now moves for discretionary review by this court. RAP 13.5.

The Court of Appeals correctly concluded that Mr. May's notices came too late to seek review of the 1997 and early 2000 orders, *see* RAP 5.2(b), and that Mr. May had not shown grounds for an extension of time under RAP 18.8(b). There is thus no basis for this court to grant review under the criteria of RAP 13.5(b). moreover, the dispute between Mr. May and Ms. Douglass is the subject of continuing proceedings in the trial court, in addition to the still-pending appeal in the Court of Appeals from the November 14 and later orders. For this court to also become involved would impede rather than advance the ultimate resolution of that dispute.

The motion for discretionary review is denied. Ms. Douglass' request for sanctions can be addressed by the Court of Appeals as that court further considers the appeal.

s/Geoffrey Crooks
COMMISSIONER

July 26, 2001

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

| | | |
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| Robert Joseph May, | ) | |
| | ) | No. 47843-5-I |
| Petitioner, | ) | |
| | ) | ORDER DENYING |
| v. | ) | MOTION TO |
| | ) | MODIFY |
| | ) | |
| Desiree Luana Douglass, | ) | |
| Respondent. | ) | |

Petitioner has filed a motion to modify a commissioner's ruling denying a motion for discretionary review. A panel of this court has considered the matter pursuant to RAP 17.7 and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 9th day of May, 2001.

s/Becker, A.C. J

s/Agid, CJ

s/Coleman, J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

| | | |
|---|---|---|
| Robert Joseph May, | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | No. 47843-5-I |
| v. | ) | |
| | ) | COMMISSIONER'S |
| Desiree Luana. Douglass, | ) | RULING DENYING |
| | ) | DISCRETIONARY |
| Respondent. | ) | REVIEW AND |
| | ) | DENYING WITHOUT |
| | ) | PREJUDICE |
| | ) | RESPONDENT'S |
| | ) | MOTION TO DISMISS |
| | ) | APPEAL |

Robert May seeks review of trial court orders entered over the past several years. May filed a combined notice of appeal/notice of discretionary review in the trial court and subsequently filed an amended notice of appeal/notice of discretionary review. Neither notice was filed within 30 days of the orders May wishes reviewed. They are therefore untimely. The motion for discretionary review is denied.
Douglass asks this court to dismiss the appeal and the discretionary review as frivolous. Although she may well be right, it is difficult to ascertain on the record before me at this point. The motion is best considered by the panel that considers this case of the merits. The motion to dismiss discretionary review is denied as moot. The motion to dismiss the appeal is denied without prejudice to raise the motion is respondent's brief.

FACTS

May and Desiree Douglass are the parents of a son born June 22, 19993. May and Douglass were not married and separated at some time after the child's birth. This action is a paternity action filed to settle issues of custody, visitation and support. May has always acknowledged paternity. The parties have been litigating this case since at least 1995. proceedings are ongoing in the superior court. Indeed, the parties argued this motion in the Court of Appeals on February 23, 2001, and intended to participate in superior court proceedings that same afternoon. Although his pleadings are confusing because they reference a multitude of orders entered in the superior court, may identifies six orders of the superior court that he contends warrant review: 1) order entered on May 19, 1997; 2) order on revision entered on June 20, 1997; 3) order entered on August 4, 1997; 4) order entered on August 4, 1997; 5) order on revision entered on February 25, 2000; and 6) order denying reconsideration entered on March 23, 2000.

On December 15, 2000, may filed a notice of appeal from a November 14, 2000, order combined with a notice of discretionary review of the May 19 and June 20, 1997, orders. On February 5, 2001, May filed an amended notice of appeal/discretionary review adding additional orders on appeal and adding the August 4, 1997, February 25, and March 23, 2000 orders to his notice of discretionary review.

DECISION

A party seeking discretionary review of a trial court decision must file a notice of discretionary review.[1] The notice of discretionary review must be filed in the trial court within 30 days after the court action to

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[1] RAP 5.1(a)

reviewed.[2] May filed his notice of discretionary review anywhere from 11 months to nearly four years after the orders that he wishes reviewed.

This court may waive the time limit for filing a notice of discretionary review.[3] Although the rules of appellate procedure are generally given a liberal interpretation, the rule permitting waiver of time for discretionary review is narrowly interpreted:

(b) Restrictions on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice of discretionary review... The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice... is directed.[4]

This court has held that "extraordinary circumstances" refers to circumstances where the filing was delayed despite reasonable diligence and was the result of excusable error or circumstances beyond the party's control.[5] May does not allege any such diligence and indeed it is inconceivable that such lengthy delays could be excused.

Moreover, this is not the first time that May has brought some of these orders before this Court. In June 1997, he filed a notice of appeal and a notice of discretionary review from several orders.[6] That case

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[2] RAP 5.2(b)

[3] RAP 18.8

[5] Beckman v. DSHS, 102 WN App. 687, 694, P. 3rd review denied, Beckman v. DSHS, No. 70118-1 (Wash. October 11, 2000), citing Reichelt v. Raymark Indus., Inc. 52 WN. App., 763, 765-66, 764 P 2d 653 (1988) and Shumwat v. Payne, 136 WN. 2d 383, 394-97, 964 P 2d 349 (1998) (denying extension of time to file discretionary review.)

[6] May v. Douglass, COA no. 40873-9-1

was dismissed on June 26, 1998, when May failed to perfect the appeal despite numerous court's motions and hearings and commissioner orders. I can think of no reason that he is entitled to another review of the same order or orders.[7]

The motion for discretionary review is denied.

Now, therefore, it is hereby

ORDERED that the motion for discretionary review is denied; it is further

ORDERED that the motion to dismiss discretionary review is denied as moot; and, it is further

ORDERED that the motion to dismiss appeal is denied without prejudice to raise in respondent's brief.

Done this 12th day of March, 2001.

s/Julie Kesler
Court Commissioner

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[7] As in this case, May's citation to numerous orders made it difficult for the court to ascertain what he was asking this court to review

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

DESIREE LUANA DOUGLASS
Natural Mother
Petitioner
and
DOMINICK EMIL MAY-DOUGLASS
vs.
ROBERT JOSEPH MAY
Presumed Father, Respondent

Case No. 94-5-03704-9-SEA

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ORDER DENYING RELIEF TO FATHER, DISMISSING PETITION, AND REFERRING MATTER TO COMMISSIONER FOR APPOINTMENT OF A NEW GAL.

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THIS MATTER having come on before the undersigned judicial officer of the above entitled court, the parties appearing in person or through their attorneys of record; and the court having heard argument concerning this matter, having been fully advised in the premises, now therefore it is

Found that there has been no substantial change in the circumstances of the child or non moving party, the mother. It is found that the parties anticipated the possibility of either party seeking to relocate and they set out procedures for notice and review by the court in that event. It is hereby ORDERED, ADJUDGED, AND DECREED that the father's Petition to Modify is dismissed with prejudice.

It is further found that the conditions necessary for the court to review the order of suspension, in particular, the court's order that the father pay the

advance retainer of the GAL so that the GAL investigate and report to court for the purpose of making a recommendation has not been met and there is insufficient evidence before the court on which to terminate the suspension. It is hereby ORDERED, ADJUDGED, AND DECREED that the father's motion to terminate the suspension is denied and that the father shall pay the advance retainer of the guardian ad litem as set forth by separate order of the court, and either party may request a review of the suspension after completion of the investigation and report to the court by the guardian ad litem.

The court finds there are insufficient facts to warrant a finding that there is an impermissible conflict of interest that would preclude Petitioner mother's attorney from acting as attorney of record for the Petitioner. ORDERED, ADJUDGED, AND DECREED that the motion to disqualify Andrekita Silva, as attorney of record is denied.

The court finds that the motions to vacate the Order of Protection dated October 3, 1996, the Order on Family Law Motion dated May 19, 1997, brought pursuant to CR60 were untimely and procedurally defective. Further, the father failed to provide an adequate defense on the merits. For all those reasons, the motions to vacate are denied.

The court denies the father's request for a declaratory judgment regarding any of the orders entered in this case as an action was not placed properly before the court and the relief would not terminate the dispute between the parties.
The court finds that all orders entered prior to December of 1999 met the requirements of due process and res judicata and not subject to review

with the exception that the order dated May 19, 1997 may be reviewed at such time as the conditions set out in the order are met, which are reiterated above, are met.

The court finds that there is not detriment to the Respondent Father regarding the untimely notice provided regarding the Petitioner's counter motion. All counter motions were in direct response to the Respondent Father's counter motions, and he received timely notice of the Petitioner's position in the Declarations and Legal Memorandum of Petitioner that were timely served on the Respondent. The court further finds that that service on the Petitioner of his additional requests for relief, including the Motion to Disqualify on October 27, 2000 for the November 3, 2000 hearing was not timely and did not provide adequate time for at the Petitioner to respond any earlier. It is in the interest of judicial economy for the encounter motion to be heard and the Declaration of Attorney of Record in Response to Motion to Disqualify to be admitted and considered for this hearing.

*The parties shall return to Commissioner Bradburn-Johnson as previously ordered by Judge Armstrong in her February 25, 2000 order, for the names of further potential GALs selected from the registry. Commissioner Bradburn-Johnson shall appoint the new GAL & set forth the GAL's duties and provisions for payment by separate order pursuant to RCW 26.26 and RCW 26.22.*

DATED this 14th day of November, 2000.

s/Steven Scott
Steven Scott, Judge

PRESENTED BY:
Law Office of Andrekita Silva

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner, Mother, Desiree Douglass

COPY RECEIVED AND NOTICE OF PRESENTATION WAIVED:

_____
Robert J. May
Respondent Father, Pro Se

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re Parentage of Dominick May Douglass
Robert Joseph May,
Petitioner,

vs.

Desiree Luana Douglass,
Respondent.

No. 94-5-03704-9 SEA

ORDER DENYING MOTION FOR RECONSIDERATION

The above entitled Court, having heard a motion by Robert May for reconsideration of ruling of 2/25/00 and for motion to amend the court's order of 2/25/00, and the court having reviewed Robert May's motion and being fully apprised,

IT IS HEREBY ORDERED that 1) Robert May's motion for reconsideration is denied; 2) the remaining motions of Robert May set for 2/25/00 are denied; 3) the remaining motions of Robert May set for 3/17/00 are denied; 4) the Court divests itself of any remaining jurisdiction over this case and directs that any further proceedings in this case be handled on the Family Law motions calendar.

DATED this 23rd day of March 2000.

Judge s/ Sharon S. Armstrong
Sharon S. Armstrong

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re
Robert Joseph May,
Petitioner,
vs.
Desiree Luana Douglass,
Respondent.

No. 94-5-03704-9 SEA

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ORDER ON CIVIL MOTION

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The above entitled Court, having heard a motion to modify the Commissioner's 1/28/00 order, and the court having considered all pleadings submitted by the parties, and having heard oral argument from both petitioner and respondent, both appearing via telephone
IT IS HEREBY ORDERED that the petitioner's motion for revision is denied. Commissioner Bradburn-Johnson's order of 1/28/00 is affirmed. The parties are also instructed that if the remaining potential GALs to decline to accept the case, Mr. May should return to Commissioner Bradburn-Johnson for the names of further potential GALs. It is also ordered that Michael Louden be stricken as a potential GAL for a conflict of interest.

DATED February 25, 2000.

s/Sharon S. Armstrong
Judge.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

| | |
|---|---|
| In re<br>Robert Joseph May,<br>Petitioner,<br>and<br>Desiree Luana Douglass,<br>Respondent. | No. 94-5-03704-9 SEA<br><br>Order on Family Law Motion |

THE ABOVE-ENTITLED COURT, HAVING HEARD A MOTION *see attached*

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DATE: January 28, 2000 s/Nancy Bradburn-Johnson
FAMILY LAW
COMMISSIONER

This matter having come before the court on Petitioner/Father's Motions for Restraining Order restraining Respondent/Mother from moving to Texas from California, to Reinstate Residential Schedule and Reinstate Temporary Visitation and To Adopt Father's Temporary Residential Schedule due to Mother's proposed move, and For Appointment of a Guardian Ad Litem; the parties both appearing pro se and personally before the court, and the court having reviewed the working papers submitted by the parties, including Mother's Reply and Counter-Motion For Relief and the court files and records herein; and having heard oral argument of the parties, and being fully advised in the premises and finding no just reason for delay does hereby enter the following:

IT IS HEREBY ORDERED

1) COMMISSIONER BONNIE CANADA-THURSTON rescues from this case.
2) The motion to restrain mother from moving to Texas from California is hereby denied;
3) The motion to reinstate residential provisions allowing father to have visitation of the Permanent Parenting Plan entered by Judge Sharon Armstrong on September 19, 1995 and which were suspended by Commissioner Kimberly Prochnau by Order entered on May 19, 1997 until father complied with the conditions set forth in the 1995 Parenting Plan is denied for insufficient evidence of proof of his compliance;
4) The motion to adopt Father's Temporary Parenting Plan is denied;
5) The motion to appoint a GAL from CASA is denied as CASA cannot be appointed in cases where the parties reside outside the State of Washington;

6) The motion to appoint a GAL to replace the withdrawal of Carolyn Davis is granted; the GAL shall be one of the following: Michael Louden (206-689-8586 (Attorney, $100/hr); Megan O'Brien-Stanley (206-521-9844)(Attorney $90/hr.); Joan Ward (206-440-1449)(MSW $95/hr.); or Joan Zegree (206-525-4775)(Attorney, $90/hr.). Father to contact and retain CAL per prior orders. GAL must sign a copy of this order indicating acceptance of CAL role and must file the order with the court (fees subject to change);
7) Father's oral motion to stay this order pending revision is denied; Mother answers in open court that she will not be moving from California within the next ten (10) days.

DONE IN OPEN COURT this 28th day of January, 2000.

s/Nancy Bradburn-Johnson
NANCY BRADBURN-JOHNSON, COMMISSIONER

Approved for entry: GAL Appointment
Accepted:
s/Robert J. May
Robert Joseph May, Father

Approved for entry:
s/Desiree Douglass
Desiree Luana Douglass, Mother

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Desiree Luana Douglass, mother
Plaintiff,
Dominick Emil May-Douglass, child

vs.

Robert Joseph May,
Defendant.

No. 94-5-03704-9

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ORDER ON CIVIL MOTION

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The above entitled Court, having heard a motion for revision of Commissioner Prochnau's order of 5/19/97, and finding no basis for revision
IT IS HEREBY ORDERED that Commissioner Prochnau's order of May 19, 1997 is affirmed.
DATED: June 20, 1997

s/Sharon S. Armstrong

JUDGE

Presented by:
s/Robert May

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Douglass, Desiree

May, Robert

94-5-03704-9 SEA
No. 94-3-04567-2 SEA

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ORDER ON FAMILY LAW MOTION

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The above entitled Court, having heard a motion by father to vacate previous orders, for major or minor modification, for contempt, mother's motions + court hearing [UNREADABLE] [UNREADABLE], considering all papers of parties and deeming it fully advised COURT RETAINS JURISDICTION for further hearing. (Father may move to reinstate visitation at such time as GAL interim report presented and provide documentation of progress with anger management) IT IS HEREBY ORDERED Father's Motion for Vacation of previous order per CR60 is denied—no legal basis is shown. Father has failed to meet the conditions for comply with September 1995 order and later orders requiring documented progress in therapy for anger control [UNREADABLE], he interfered and failed to cooperate in Common Ground visitation exchange

DATED 5/19/97

s/ Kimberly D. Prochnau
Judge/Court Commissioner

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Douglass, Desiree

May, Robert

94-5-03704-9 SEA
No. 94-3-04567-2 SEA

ORDER ON FAMILY LAW MOTION

to pay for GAL fees, but has not provided financial declaration to show his inability to pay fees (and has not paid support which further financial disadvantages mother's ability to litigate) (GAL appointed by Judge Johnson 1/14/97) Judge Armstrong found that a GAL was needed given father's abusive use of conflict, he has also returned child late.
IT IS HEREBY ORDERED father's motion for contempt is denied, father did not personally serve her with his motion and get an order to show cause. LR 94.04(i). Court further finds contempt re father's failure to return child on time; father has failed to show waiver by clear, cogent, convincing evidence.

DATED: 5/19/97

s/Kimberly Prochnau
Judge/Court Commissioner

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Douglass, Desiree

May, Robert

94-5-03704-9 SEA
No. 94-3-04567-2 SEA

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ORDER ON FAMILY LAW MOTION

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The above-entitled Court, Having heard a motion Court finds per In re Giordano and In re Lilly this is a high conflict case and requires case management. Father shall pay the mother's share of GAL retainer fees—her share of retainer shall be deduced from child support arrears. Until GAL appointed and review case and father provides documentation of substantial compliance with order of 9/95 regarding anger management.
IT IS HERBY ORDERED court suspends visitation. Court finds threshold has not been met—case schedule shall be cancelled. Court reaffirms appointment of Caroline Davies due to her special expertise. (Father failed to document financial inability). Retainer fees are (UNREADABLE] $1800 of on father may set off $900 against arrears.

DATED: 5/19/97

s/Kimberly Prochnau
Judge/Court Commissioner

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

In Re Custody of DOMINICK EMIL MAY-DOUGLASS
ROBERT JOSEPH MAY
Petitioner,

DESIREE LUANA DOUGLASS
Respondent.

No. 94-3-04567-2

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PARENTING PLAN
[x] FINAL ORDER
(PP)

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1.1. This parenting plan is:

the final parenting plan signed by the court pursuant to a an order of parentage entered on *September 19, 1995*.

## I. GENERAL INFORMATION

1.1. This parenting plan applies to the following child:

| Name | Birthdate |
|---|---|
| Dominick Emil May-Douglass | June 22, 1993 |

## II. BASIS FOR RESTRICTION

2.1. PARENTAL CONDUCT (RCW 26.09.191(1), (2).

The father's residential schedule time with the child shall be limited and mutual decision making and designation of a dispute resolution process other than court action shall not be required because this parent has engaged in conduct which follows.

a. Substantial refusal to perform parenting functions. Pursuant to 26.09.004(3) parenting functions include
   (1) - DELETED BY JUDGE ARMSTRONG 9/19/95 -
   (2) providing for financial support of the child.

2.2. OTHER FACTORS (RCW 26.09.191(3))

a. The father's conduct may have an adverse effect on the child's best interest because of the existence of the factors which follow.

   (1) The abusive use of conflict and intimidation by the parent which creates the danger of serious damage to the child's psychological development.

This factor serves as a current basis for restrictions with respect to decision making and dispute resolution and serve to limit the frequency of exchange of residential care.

III. RESIDENTIAL SCHEDULE

Dominick shall reside in the primary care of his mother. The following provisions set forth where Dominick shall reside each day of the year and what contact Dominick shall have with each parent. The following provisions may be adjusted mutual written agreement.

3.1. PRE-SCHOOL SCHEDULE

Dominick shall reside with the mother, except for the following days and times when Dominick will reside with or be with the father:

a. (1) Every *1st, 3rd and 5th* of each month from Friday at 4:00p.m.until Saturday 4:00 p.m.

(2) Every *2nd and 4th* Wednesday from 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at day care until the next morning by 9:30 a.m. when the father delivers the child to day care or to the intermediary if there is no day care that day.

b. Eighteen months after entry of this permanent order, so long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside with or be with the father as follows:

(1) Every *1st, 3rd and 5th* weekend of each month from Friday at 4:00 p.m. until Saturday 4:00 p.m.
(2) Every *2nd and 4th* Wednesday from 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at day care until the next morning by 9:30 a.m. when the father delivers the child to day care or to the intermediary if there is no day care that day.

(3) Holidays as set forth in Schedule for Holidays at 3.7 and Special days as set forth in the Schedule for Special Days at paragraph 3.8.

c. For purposes of 3.1, the first weekend of the month shall be defined as a weekend in which both Friday and Saturday land in the new month.

3.2. SCHOOL SCHEDULE:

a. Upon enrollment in elementary school, Dominick shall reside with the mother, except for the following days and times when Dominick will reside with or be with the father so long as the father shall have

(a) complete a parenting class,
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside with or be with the father as follows:

(1) Every *1st, 3rd and 5th* weekend of each month from Friday at 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at school or day care) until Sunday 4:00 p.m.
(2) Every *2nd and 4th* Wednesday from 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at school or day care until the next morning by 9:30 a.m. when the father delivers the child to school.
(3) Holidays as set forth in Schedule for Holidays at 3.7 and Special days as set forth in the Schedule for Special Days at paragraph 3.8.below.

(4) Vacation time as set forth in Vacation with Parents
(4) Vacation time asset forth in Vacation with Parents at 3.6 below.

3.3. SCHEDULE FOR WINTER VACATION

Dominick shall reside with his mother except that upon enrollment in elementary school, so long as the father shall have

(a) completed a parenting class, .
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside as follows:
In even years he shall be with his mother for Winter Vacation and in the odd years he shall be with his father for Winter Vacation.
Winter vacation shall begin at 3:00 p.m. the day school is out and it shall end at 5:00 p.m. seven days later.

3.4. SCHEDULE FOR SPRING VACATION.

Dominick shall reside with his mother except that upon enrollment in elementary school, so long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/ control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside as follows:

In even years he shall be with his mother for Spring Vacation and in odd years he shall be with his father for Spring Vacation.

Spring vacation shall begin at 3:00 p.m. the day school is out and it shall end at 5:00 p.m. the day before school reconvenes.

3.5. SUMMER SCHEDULE.

Same as 3.1 and 3.2 except as follows:

a. Mother: The mother may exercise vacation as described in 3.6 during the summer.
b. Father: Father's vacation upon enrollment in elementary school by Dominick: So long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then the father shall be entitled to the vacation time set forth in 3.6 below.
c. Vacation time exercised by either parent is subject to the additional conditions set forth in 3.6 below.

3.6. VACATION WITH PARENTS.

a. The schedule foe vacation with parents is as follows:

(1) Mother's vacation: In addition to Spring Vacation and Winter Vacation, the mother shall be entitled to four weeks of vacation with Dominick. The vacation time may be

taken in uninterrupted blocks. A block may not exceed three weeks.

(2) Father's vacation in addition to Spring Vacation and Winter Vacation: Upon enrollment in elementary school by Dominick: So long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues
(c) and so long as the guardian ad litem recommends in writing

then the father shall be entitled to two weeks of uninterrupted vacation time with Dominick.

(3) Father's vacation in addition to Spring Vacation and Winter Vacation: When Dominick turns age ten (10), so long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues,
(d) and so long as the guardian ad litem recommends in writing

then the father shall be entitled three weeks of uninterrupted vacation time with Dominick during the summer.

b. A parent's vacation is contingent upon at least 30 days written notice to the other parent. So long as timely notice is provided , in the event of a scheduling conflict over vacation time, the father shall have first choice in even years once he is entitled to exercise visitation and the mother will have first choice in odd years.

c. The vacation exercised by either parent pursuant to this section shall not displace any of the other parent's special days, and is inclusive of residential time and special days awarded to the parent exercising their vacation.
d. The parent exercising vacation time shall provide the other parent with a telephone and address where the child or other parent can be reached in the event of an emergency during the vacation.
e. Should the mother's exercise of vacation time displace the overnight residential time to which the father is entitled pursuant to this plan, the father shall be compensated for the displaced residential time upon the mother's return as follows:

(1) the father's next visit with Dominick shall be extended by a period of 24 hours each overnight visitation missed by the father as a result of the mother's vacation.

3.7. SCHDULE FOR HOLIDAYS.

a. Preschool schedule for holidays: The residential schedule for Dominick prior to Dominick beginning school shall be as set for at 3.1.
b. Holiday schedule after enrollment in elementary school: Upon enrollment in elementary school, the residential schedule for the holidays listed below is as follows:

| | Mother | Father |
|---|---|---|
| Easter- from 10:00 a.m. to 7:00 p.m. | Even | Odd |
| Thanksgiving Day from 10:00 a.m. to | | |

| | | |
|---|---|---|
| 7:00 p.m. | Odd | Even |
| Christmas Day | Odd | Even |

Christmas begins at noon December 24 and ends at 5:00 p.m. December 25

c. The parent seeking to exercise his or her residential time set forth in this section shall be responsible for the transportation each way.

3.8. SCHEDULE FOR SPECIAL OCCASIONS.

The residential schedule for Dominick for the following special occasions is as follows so long as the father shall have

(a) completed a parenting class
(b) show documented progress in therapy for anger/control
(c) and so long as the guardian ad litem recommends:

| | Mother | Father |
|---|---|---|
| Mother's Day | Every | _____ |
| Father's Day | _____ | Every |
| Albert May's birthday | _____ | Every |
| Michael's May's birthday | _____ | Every |
| Daniel May's birthday | _____ | Every |
| Desiree's birthday (June 20) | Every | _____ |
| Dominick's birthday | Odd | Even |
| Jedediah Douglass' birthday | Every | _____ |
| Robert J. May's birthday (September 10) | Every | _____ |
| Kimberly May's birthday | Every | _____ |

The above special days begin at 10:00 a.m. and end 7:00 p.m.

Notwithstanding the above, special days shall be exercised by the father only if the child listed above is a minor child residing in his primary residential care. If Father's Day falls on Dominick's birthday, Dominick will spend that day with the mother from 10:00 a.m. until 7:00 p.m.
If Father's Day falls on the mother's birthday, Dominick will spend that day with the mother from 10:00 a.m. until 7:00 p.m.
The parent seeking to exercise his or her residential time set forth in this section shall be responsible for the transportation each way.

3.9. PRIORTIES UNDER THE RESIDENTIAL SCHEDULE.

For purposes of this parenting plan the following days shall have priority:

Holidays, special occasions over the pre-school/school schedule and vacation schedule. Priorities may be adjusted upon mutual written agreement.

3.10. RESTRICTIONS

The following restrictions shall apply when Dominick spends time with either parent (see paragraph 2.1):

a. Neither parent shall speak in a disparaging manner about the other in the presence of Dominick.
b. Neither parent shall use physical punishment or physical discipline.

3.11. TRANSPORTATION ARRANGEMENTS.

Unless specified otherwise is another provision in this plan, transportation arrangements for

Dominick, other than costs, between parents shall be shared as follows:

a. So long as the day care is open or so long as it is a school day once Dominick is in school, the father shall pick up Dominick from the day care or school at the beginning of his visitation.
b. If day care or school is open at the end of the father's visit, then the father shall return Dominick to school or day care.
c. So long as a third party intermediary is required to facilitate visitation, *a* third party *professional* intermediary shall be selected and / or hired by the mother. Each party shall be responsible for their own transportation to the designated point of transition. The transition point or intermediary shall be Common Ground in Seattle, Washington unless a more convenient, less costly intermediary is selected or hired by the mother. Notice of any change in the intermediary shall be provided to the father in writing.
d. Except as set forth in a. and b. above in this section, whichever parent is to begin the exercise of their residential time under shall be responsible for transportation of Dominick.

3.12. OTHER:

3.13. DESIGNATION OF CUSTODIAN.

The child named in this parenting plan are scheduled to reside the majority of the time with the mother. This parent is designated the custodian of Dominick solely for purposes of all other state and federal statues which require a designation or determination of custody. This

designation shall not affect either parent's rights and responsibilities under this parenting plan.

IV. DECISION MAKING

4.1. Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent, except as provided below.

4.2. All major decisions regarding each child shall be made by the mother including but not limited to: Education decisions, decisions regarding Non-Emergency health care, whether Dominick can obtain a driver's license, join the military services prior to age 18, or marry prior to age 18.

4.3. RESTRICTIONS.

a. Sole decision making shall be ordered to the mother for the following reasons:

(1) One parent is opposed to mutual decisions making, and such opposition is reasonably based on the following criteria:

(a) The existence of a limitation under RCW 26.09.191;

V. DISPUTE RESOLUTION

No dispute resolution process, except court action, shall be ordered, because a limiting factor under 26.09.191 applies.

There has been the abusive use of conflict and the parties are not in equal bargaining positions so that neither counseling nor mediation would

be effective. The parties do not have the financial means to participate in arbitration.

## VI. OTHER PROVISIONS

There are the following other provisions:

1. ADJUSTMENTS IN SCHEDULE IN THE EVENT THE MOTHER MUST WORK OUT OF TOWN

   In the event the mother is called upon to work out of town on a temporary basis, with 10 days notice, the father's residential time may be displaced by the mother's absence. However, the father shall be compensated for all overnight residential time which is displaced. Such residential time to the father's next visit for each overnight visit missed by the father.

   Mother's out of town work schedule shall not be regarded as vacation time.

2. MOVE OF DOMINICK"S RESIDENCE: The mother may not move Dominick's residence in such a manner that the exercise of the father's visitation time becomes impracticable without prior order of the court or mutual written consent.

   In the event either parent changes his or her permanent residence so that exercise of the father's visitation becomes impracticable, the residential schedule shall be reviewed by the court. In that event:

   a. The parent moving must give the other parent and the guardian ad litem 45 days notice of his or her intent to move and the proposed location of the move, and the proposed residential schedule to be sought from the court.

b. Within 14 days, the parent receiving notice of a move as well as the guardian ad litem should respond to the other parent by either consenting, or by providing written objections and suggestions regarding an acceptable residential schedule or by providing written notice of lack of consent.

c. In the event no agreement is reached, the party wishing to have a new residential schedule approved by the court shall bring the matter before the Family Law Department for a motion and twenty (20) days notice of the hearing shall be provided to the other party and guardian ad litem.

In the event the move is permitted, if the move is out of state, when adopting a new residential schedule unless good reason exist otherwise, the court shall give a preference to the following:

(1) The father shall receive a minimum of

(a) 24 nights per year immediately after entry of this order but prior to an 18 month review
(b) 36 nights per year once the conditions set forth in 3.1.b. have been met but prior to Dominick being enrolled in elementary school;
(c) 42 nights per year once the conditions set forth in 3.2 have been met and Dominick is enrolled in elementary school; and

(2) Overnight holiday time provided pursuant to 3.7 of this parent plan shall remain effective.

(3) Non overnight holidays provided pursuant to 3.7 and special days provided pursuant to 3.8 of this parent plan shall remain effective so long as the father travels to the geographic area where the mother resides.

3. NO CONTACT BY PARTIES PENDING RECOMMENDATION BY G.A.L. Neither party shall have contact with one another either in person, by mail, by telephone, or though third parties except for the sole purpose of communicating with respect to Dominick's care or in event of emergencies, all communications should be through the mail. The no contact provisions should expire 18 months from entry of the permanent parent plan unless the guardian ad litem recommends otherwise in writing.
4. VISITATION TO BE FACILITATED THROUGH THIRD PARTY: Unless the guardian ad litem recommends otherwise in writing, all visitation pursuant to this parent plan should be facilitated through a third party for a period of 18 months after entry of this order. If the day care is open, then the transition for visitation shall occur at the day care with the mother not present.

   If the day care is not open, unless agreed upon otherwise in writing, the drop off and pick up location shall be at Common Ground unless another more convenient and less expensive intermediary is selected or hired by the mother.

   The cost of any third person assisting with visitation shall be paid pursuant to the Order of Support.

5. The father shall complete a parenting class and participate in treatment for anger and control issues.

6. A guardian ad litem shall continue to represent the interests of Dominick, pending the age of majority. The father shall provide a release of information to the guardian ad litem to monitor attendance, progress, and prognosis in therapy regarding any and all issues which impact the residential schedule so long as the guardian ad litem is appointed to represent the child's interests.
7. Neither parent shall speak in a disparaging manner about the other in the presence of Dominick.
8. Neither parent shall use physical punishment or physical discipline.
9. EMERGENCIES INVOLVING DOMINICK: In the event of a serious medical or health emergency involving Dominick, the parent having the care of Dominick at the time of the time of the emergency shall give the other parent notice within 2 hours or as soon as is possible, of the serious medical or health emergency.
10. NOTICE REQUIRED PRIOR TO REMOVAL FROM STATE: Neither parent shall remove Dominick from the State of Washington for vacation or visitation without giving 24 hours prior notice to the other parent of the intended destination.

## VIII. ORDER BY THE COURT

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of the courts and may be a criminal offense under RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith

effort to resolve the issue through the dispute resolution process.
If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

DATED this 19th day of September, 1995.

s/ Sharon S Armstrong
Sharon Armstrong,
Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent Pro Se

Copy received and
Notice of Presentation Waived by:

_____
Don Layton, M.S.W.
Guardian ad litem

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

| | |
|---|---|
| DESIREE LUANA DOUGLASS<br>Natural Mother,<br>Petitioner,<br>and<br>DOMINICK EMIL MAY-DOUGLASS<br>Child,<br>vs.<br><br>ROBERT JOSEPH MAY<br>Presumed Father,<br>Respondent. | )<br>)<br>) No. 94-5-03704-9<br>)<br>) ORDER APPOINTING<br>) GUARDIAN AD LITEM<br>)<br>)<br>)<br>)<br>) |

The Petitioner request an order maintaining the appointment of a guardian ad litem. It appears that good cause exists to maintain the appointment of Don J. Layton, as guardian ad litem for certain limited purposes, therefore,

IT IS ORDERED:

1. APPOINTMENT OF GUARDIAN AD LITEM.

   That Don J. Layton shall remain guardian ad litem for the minor child, Dominick Emil May-Douglass, for the limited purposes of making recommendations to the parties and to the court regarding issues that arise pursuant to the Parent Plan, Final Order.

2. TERMINATION OF APPOINTMENT.

   This appointment shall terminate upon the minor child reaching the age of *12 years*.

3. OTHER PROVISIONS.

   The undersigned guardian ad litem agrees to this appointment, understands the nature of this action accepts the following responsibilities:

(a) To protect the legal interests of the minor child through minority with respect to any issues that arise pertaining to the parent plan; and
(b) To explain to the minor child all documents and correspondence regarding this parentage action in the event of court activity, if any, at a later date; and
(c) To comply with all court orders and to attend all meetings and court hearings pertaining to the residential schedule that are scheduled in this action.

4. OTHER: In the event of further disputes pertaining to the parent plan for this minor child and / or prior to any changes being made in the residential schedule:

a. The guardian ad litem shall have access to all Superior Court files and all Juvenile Court files, including any sealed / confidential portions thereof.. The clerk of the court shall provide certified copies of this order to the guardian ad litem upon request and without charge.
b. The guardian ad litem shall be entitled to notice of all court proceedings.
c. The guardian ad litem shall have access to the minor child and information about the child. Each party and their counsel shall cooperate fully in providing access to the guardian ad litem and in providing all requested information.
d. The guardian ad litem shall have access to all school, medical, therapy and counseling records and information, whether written or oral, regarding this child and the parents. These records shall be released directly to the guardian ad litem upon presentation of a copy of this Order in person or by mail.
e. The guardian ad litem shall have access to all Child Protection Services, Department of Social and Health Services and alcohol/substance abuse treatment

records regarding these parties and their child without further written release by either parent upon presentation of this Order to these agencies. However, these agencies mat black out names and identification of such individuals who are protected by law or agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or her parents, the agency may withhold the information subject to others orders of the court. CPS, DSHS and alcohol and substance abuse treatment personnel are authorized to speak personally with the guardian ad litem.

f. The guardian ad litem shall have access to all TIEPINS and police reports regarding these parties and their child. Written copies of these items shall be released to the guardian ad litem upon request by law enforcement agencies. However, these agencies may black out names and identification of such individuals who are protected by laws or agency policy as confidential sources.

g. The guardian ad litem shall maintain any information received as confidential and shall not disclose said information except in oral or written reports to the court, the parties and their counsel.

h. The guardian ad litem shall make a full and complete written report to the court and counsel/parties within 60 days of entry of this Order, provided that an extension may be granted by the court. This report shall include recommendations and basis for those recommendations.

i. Other duties of the guardian ad litem include appearing at all court hearings where the residential care of the child is at issue unless excused by the court, and assisting the parties and counsel in reaching a resolution of the of the matters involving said child. If resolution is reached, the guardian ad litem shall assist counsel in drafting a proposal for

presentation to the court for approval along with the guardian ad litem's report.

j. The fees and costs of the guardian ad litem shall be paid as set forth in the Judgment and Order Determining Parentage.

k. Each party shall execute any and all release of information necessary for the guardian ad litem to comply with the court's orders.

DATED this 19th day of *September*, 1995.

s/ Sharon S. Armstrong
Sharon Armstrong, Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent, Pro Se

Copy received and
Notice of Presentation Waived by:

_____
Don J. Layton, M.S.W.
Guardian ad litem

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

| | |
|---|---|
| DESIREE LUANA DOUGLASS<br>Natural Mother,<br>Petitioner,<br>and<br>DOMINICK EMIL MAY-DOUGLASS<br>Child,<br>vs.<br><br>ROBERT JOSEPH MAY<br>Presumed Father,<br>Respondent. | )<br>)<br>) No. 94-5-03704-9<br>)<br>) JUDGMENT AND<br>) ORDER<br>) DETERMINING<br>) PARENTAGE AND<br>) GRANTING<br>) ADDITIONAL<br>) RELIEF |

## III. JUDGMENT SUMMARY

[x] The judgment summary is as follows:

A. Judgment Creditor Desiree L. Douglass
B. Judgment Debtor Robert J. May
C. Principal judgment amount (back support) $ 3075.00
from June 1994 to August 31, 1995.

D. Interest to date of Judgment $ 0
E. Attorney's fees $ 0
F. Costs $ 0
G. Other recovery amount $ _____
H. Principal judgment shall bear interest at 12 % per annum.
I. Attorney's fees, costs and other recovery amounts shall bear interest at 12 % per annum.
J. Attorney for Judgment Creditor: F. Andrekita Silva
K. Attorney for Judgment Debtor Robert J. May, Pro Se

A. Judgment Creditor Desiree Douglass
B. Judgment Debtor Robert J. May
C. Principal judgment amount (back day care) $ 2749.00
From June 1994 to August 31, 1995.

D. Interest to date of Judgment $ 0
E. Attorney's fees $ 0
F. Costs $ 0
G. Other recovery amount $ 0
H. Principal judgment shall bear interest at 12 % per annum.
I. Attorney's fees, costs and other recovery amounts shall bear interest at 12 % per annum.
J. Attorney for Judgment Creditor F. Andrekita Silva
K. Attorney for Judgment Debtor Robert J. May, Pro Se

A. Judgment Creditor Andrekita Silva
B. Judgment Debtor Robert J. May
C. Principal judgment amount (back support): $_____
D. Interest to date of Judgment $ 00.00
E. Attorney's fees $10,000.00
F. Costs $_____
G. Other recovery amounts
H. Principal judgment shall bear interest at ___% per annum.
I. Attorney 's fees, costs and other recovery amount Shall bear interest at 12 % per annum.
J. Attorney for Judgment creditor Andrekita Silva
K. Attorney for Judgment debtor Robert J. May, Pro Se

## I. BASIS

This matter has come before this court, the court considered the case record to date and has previously entered its findings of fact and conclusions of law.

## II. ORDER

IT IS ORDERED that:

3.1. DESIGNATION OF NATURAL FATHER.

Robert J. May is the father of Dominick Emil-May Douglass, born to Desiree L. Douglass, on June 22, 1993.

The child's social security number for Dominick is 531-29-5864.

3.2. RESIDENTIAL SCHEDULE/PARENTING PLAN.

The parenting plan signed by the court on the same date as the court approved this order below is adopted and incorporated by reference.

3.3. ORDER OF CHILD SUPPORT.

Robert J. May shall pay child support as set forth in the Order of Child Support which is filed separately.

3.4. JUDGMENT.

Attorney fees: the Petitioner, Desiree Douglass, shall be awarded attorney fees in the amount of $10,000.00. Such award shall be entered as a judgment directly to Petitioner's attorney of record, Andrekita Silva.

3.5. COUNTY COSTS.

Does not apply.

3.6. BIRTH CERTIFICATE

The birth certificate of the minor child in this action already correctly identifies Robert J. May as natural father. No additional action need be taken by the Department of Health, Office of Vital Records.

3.7. GUARDIAN AD LITEM

a. Continue appointment: The appointment of the guardian ad litem, Don Layton, M.S.W., shall remain

in place to protect the best interests of the child pending the age of *12.*

b. Temporary fees and costs of G.A.L.
Each party is responsible for *approximately* one half of the fees incurred for services performed by the guardian ad litem. The Petitioner continues to owe $*200.00* in unpaid fees. These fees shall be paid in full by the end of next month. The Respondent continues to owe $*1383.62* to the guardian ad litem in unpaid fees. The Respondent shall pay a minimum of $150.00 per month beginning immediately to the guardian ad litem until the fees and costs he owes are paid in full.

c. Future fees and costs: Prior to any additional work being done by the guardian ad litem being done, each party shall pay an advance retainer of $*200.00* a piece to be credited towards the work to be done.

The court shall allocate responsibility for payment of any fees and costs charged by the guardian ad litem, above and beyond the $ 400.00 combined advance retainer paid by *the* party after considering for what reason the fees and costs were incurred, whether one parties conduct or request was the basis for the fees being incurred, or any other factors the court deems relevant.

3.8. OTHER PROVISIONS.

a. Back Child Support and Day Care: The obligee parent, Desiree L. Douglass, is awarded a judgment against the obligor parent, Robert J. May, in the amount of $3075.00 for back child support for the period from June 1, 1994 to August 31, 1995 at the rate of $225.00 per month with credit given for three payments of $100.00. Additionally, the obligee parent, Desiree L. Douglas, is awarded a judgment

against the obligor parent, Robert J. May, for $2749.00 which is his share of day care costs incurred from June 1, 1994 to August 31, 1995. *The daycare costs numbered mere $7178. Respondent shall be ½, after deducting City of Seattle credits of $1680.00.*

b. Unpaid support due to Washington or California: The unpaid support due to both the State of Washington and the State of California for public assistance by Robert J. May is waived and will not be collected by either the State of Washington or the State of California.

c. Collection Limitation Against Wages:

Not applicable.

The obligee parent and/or the State of Washington may use any collection remedy available by law, including, but not limited to, certification for collection to the Internal Revenue Service. Payment shall be made to:

Washington State Support Registry for the benefit if Desiree L. Douglass

d. Wage Withholding Action:

A notice of payroll deduction may be issued or other income withholding action under Chapter 26.18 RCW or Chapter 74.20A RCW may be taken, without further notice to the judgment debtor any time after entry of an order by the court.

e. Judgment and Back Support Payments Shall Be Made:

To the: Washington State Support Registry
P.O. Box 9009
Olympia, Washington 98507
Phone #: 1-800-922-4306

Each party shall notify the Washington State Support Registry of any change in residence address.

3.9. OTHER:

a. Cost for Intermediary: The parties shall share equally the fees charged by the intermediary for visitation.
b. Restraining provisions:

(1) The Respondent, Robert J. May, shall be restrained from going within 50 yards of the residence of the mother.
(2) Both parties are restrained from assaulting, harassing, molesting or disturbing the peace of the other party. This order shall terminate two years from entry of this order unless either party brings a motion prior to the date of termination and unless an order continuing the restraints are granted by the court prior to termination.
(3) Both parties are restrained from contact with the other either directly, in person, on the telephone, in writing or through third parties. Notwithstanding the above, the parties may have that contact necessary to communicate with respect to the care of Dominick or in the event of emergencies pertaining to Dominick. Unless it is an emergency, the contact should be in writing. This order shall 18 months from entry of this order unless either party brings a

motion prior to the date of termination and unless the guardian ad litem makes a written recommendation that such no contact order should be extended.

DATED this 27TH/ day of *September*, 1995.

s/ Sharon S Armstrong
Sharon Armstrong, Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent Pro Se

Copy received and
Notice of Presentation Waived by:

_____
Don Layton, M.S.W.
Guardian ad litem

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

| | |
|---|---|
| DESIREE LUANA DOUGLASS<br>Natural Mother,<br>Petitioner ,<br>and<br>DOMINICK EMIL MAY-DOUGLASS<br>Child,<br>vs.<br><br>ROBERT JOSEPH MAY<br>Presumed Father,<br>Respondent. | )<br>)<br>) No. 94-5-03704-9<br>)<br>) FINDINGS OF FACT<br>) AND<br>) CONCLUSIONS OF<br>) LAW<br>)<br>)<br>) |

## I. BASIS FOR FINDINGS

The Findings are based on trial. The following people attended:

a. Petitioner, Desiree L. Douglass.
b. Petitioner's Lawyer, Andrekita Silva
c. Respondent, Robert J. May, Pro Se
d. Don Layton, M.S.W., Guardian ad litem
e. Witnesses for both parties

## II. FINDING OF FACT

Upon the basis of the court record, the court FINDS:

2.1. NOTICE AND BASIS OF PERSONAL JURISDICATION OVER THE RESPONDENTS.

All parties necessary to adjudicate the issues were served with a copy of the summons and petition and are subject to the jurisdiction of this court.

The facts below establish personal jurisdiction over the Father:

a. The father was served within the State of Washington.
b. Both parties reside within the State of Washington.
c. The minor child may have been conceived as a result of sexual intercourse occurred within the State of Washington.

2.2. CONCEPTION OF THE CHILD.

The mother and father engaged in sexual intercourse resulting in the conception of Dominick Emil May-Douglass who was born on June 22, 1993.

2.3. PARENTAGE.

a. Robert J. May acknowledges paternity of Dominick Emil May-Douglass.
b. The court has found Robert J. May to be the father of Dominick Emil May-Douglass.

2.4. OTHER PARTIES.

a. A guardian ad litem was appointed and is a party to this action. There were no other parties. The guardian ad litem shall remain a party to this action.

2.5. COSTS AND FEES.

The Petitioner, Desiree L. Douglass, has incurred reasonable attorney fees and costs in excess of $22,000.00. Legal fees around $12,000.00 could have been anticipated. However, amounts over that were the result of excess litigation by the Respondent, Robert J. May, and were vexatious.

The Respondent, Robert J. May, shall be liable for attorney fees and costs in the amount of $10,000.00 to be

entered as a judgment directly to the Petitioner's attorney of record.

2.6. CONTINUING RESTRAINTING ORDER.

A continuing restraining order is necessary because the Respondent is not accepting of the Petitioner's position that their relationship is over. This is a source of anger and frustration to him. Restraints and no contact are necessary until the Respondent is able to address these issues in anger management.

In order to avoid contact, the transitions for visitation should occur at the day care or school when the day care/school is open and at Common Ground (or other intermediary hired or selected by the mother when the day care/school is not open. The fees charged by the intermediary shall be shared equally by the parties.

The children in the father's or mother's home should not be bound by the restraints between the mother and father and the children in the father's home should have whatever contact all parties deem appropriate with mother and her environment with the exception that the father shall not violate the restraints or no contact provisions by communicating through the children what is not permitted directly by him.

2.7. RESIDENTIAL SCHEDULE/PARENTING PLAN:

With a few exceptions, all aspects of the Petitioner's Proposed Parent Plan dated should be adopted, including but not limited to the decision making, restrictions and limitations.

One exception pertains to the proposal made by the Petitioner during her oral testimony in trial. The Petitioner proposed that the visitation for Dominick be once per week, overnight, rather than twice per month overnight with evening visits during the week. That

proposal should be adopted by the court with visitation being every second and fourth Saturday overnight and every first, third and fifth Wednesday of the month, overnight.

The Petitioner's proposed provision permitting her to move out of the area without a court order or mutual written agreement is not approved but a preference shall be given to the parameters set forth in her parent plan, which are based on the recommendation of the guardian ad litem when determining the visitation for a move from the area.

The court finds the limitations and restrictions requested appropriate. The court has concerns beyond the differences in the parenting styles of the parents. The court finds that although the children in the father's home have done well in sport, art or music, and have friends, and this speaks well to Respondent, father, there were other elements which were absent. There is a high level of anger in the father's environment which is not good for children in the environment. For that reason, the children shall be placed in the primary care of the mother with limited contact to the father.

The father is a man of enormous achievement but anger is a dominant mode. He must work in treatment for his anger very seriously. Although the court does not order, the court recommends that he take steps to determine if there is a chemical imbalance.

Although it is possible that the mother and father may be able to work together in the future, a no contact order is appropriate at this time. The father is having difficulty accepting the mother's position that the relationship is over and this is a terrible source of frustration and anger to the Respondent. It is important to have no contact except that contact absolutely necessary to communicate regarding Dominick's needs.

The parenting plan signed by the court on the same date as these findings of fact were signed and approved is approved and incorporated as part of these findings.

2.8. CHILD SUPPORT.

The minor child, Dominick Emil May-Douglass, is in need of support and child support should be set pursuant to the Washington State Child Support Schedule.

The court has considered the father's request for a deviation from the schedule based on the fact that he has four children in his home for whom he provides care and support and the court has considered that he receives low support payments from the mother's of the children not a party to this action. The court has also considered the benefits which the Petitioner, mother, began to receive in May of 1995 from the City of Seattle to assist her with day care costs. The father will pay 50% of day care costs charged by the day care provider, *less daycare* benefits received by the mother from the City of Seattle. It is anticipated that the level of benefits, if any are to be received in the future, will change based on changes in the petitioner's financial circumstances, including but not limited to child support paid by the father.

A deviation as a result of the father's care of four other children is appropriate in this case and should be ordered. The Order of Child Support signed by the court on the same date as these findings of fact were signed and approved and the child support worksheet which has been approved by the court are incorporated by reference in these findings.

2.9. OTHER:

a. COST OF GUADIAN AD LITEM: Fees and costs of $3491.00 were incurred for the services of the guardian ad litem. Those costs should be shared

equally. The Petitioner has paid $1457.38 and owes $293.25 for her one half of fees and costs to the guardian ad litem. The Respondent has paid $450.00 and owes $1290.37 to the guardian ad litem. The Respondent shall pay a minimum of $150.00 per month beginning immediately to the guardian ad litem until the fees and costs he owes are paid in full. The Petitioner has arranged to pay the balance she owes in full next month.

Before the guardian ad litem does further work on this matter for the parties, each party shall pay an advance retainer of $400.00 to be applied to fees and costs for work to be performed by the guardian ad litem.

In the future, the court shall allocate responsibility for payment of any fees and costs charged by the guardian ad litem, above and beyond the $400.00 advance retainer paid by each party after considering for what reason the fees and costs were incurred, whether one parties conduct or request was the basis for the fees being incurred, or any other factors the court deems relevant.

## III. CONCLUSIONS OF LAW

The court makes the following conclusions of law from the foregoing findings of fact:

3.1. JURISDICTION.

The court has jurisdiction to enter an order in this matter.

3.2. DISPOSITION.

The court shall

a. determine the parentage of Dominick Emil May-Douglass;
b. make provisions for a parenting plan;
c. make provisions for the past and current support of Dominick Emil May-Douglass;
d. and make provision for costs including Guardian Ad Litem fees, health insurance costs and attorney fees.

3.3. CONTINUING RESTRAINING ORDER.

A continuing restraining order including no contact provisions should be entered.

3.4. OTHER PARTIES.

The guardian ad litem, Don Layton, shall remain a party to this action.

3.5. OTHER:The fees charged by the intermediary hired for visitation shall be shared equally by the parties.

DATED this 19th day of September, 1995.

s/ Sharon S Armstrong
Sharon Armstrong, Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent Pro Se

Copy received and
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_____
Don Layton, M.S.W.
Guardian ad litem